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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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WASHINGTON, D.C. 20554

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In the Matter of

BellSouth Petition for Forbearance
From Application of Section 272
of the Communications Act of 1934,
as Amended, to Previously
Authorized Services

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CC Docket No. 96-149

BELLSOUTH REPLY TO COMMENTS ON ITS SUPPLEMENTAL FILING

BellSouth Corporation, on behalf of BellSouth Telecommunications, Inc. ("BellSouth"), hereby responds to comments submitted on BellSouth's Supplemental Filing¹ in the above referenced proceeding.

Neither of the commenting parties, AT&T nor MCI, generally opposes BellSouth's request for relief of the separate affiliate requirements of Section 272² for BellSouth's pre-existing reverse directory and E911 service offerings. MCI simply continues to press its claim of entitlement to information BellSouth does not have the discretion to provide. AT&T, in a single line of its comments, parrots MCI, and spends the rest of its comments making erroneous assertions about the adequacy of BellSouth's Supplemental Filing. Neither of these parties, however, has offered any reason BellSouth's request for forbearance fails to meet the three-pronged standard established by Congress in Section 10.³ With BellSouth having met that

¹ Letter to Ms. Carol Matthey, Deputy Chief-Policy Division, Federal Communications Commission, from David G. Frolio, General Attorney, BellSouth (June 30, 1997).

² 47 U.S.C. § 272.

³ Section 10 of the Telecommunications Act of 1996, 47 U.S.C. § 160.

standard, the Commission is thus required to forbear from application of Section 272 to BellSouth's reverse directory and E911 services.⁴

Reverse Directory Services

MCI continues to press its red herring argument, asserting a derivative entitlement to third party directory listing information that BellSouth is not authorized to provide to MCI, regardless of whether BellSouth establishes a separate affiliate.⁵ Moreover, MCI has not denied that it has the opportunity and the right to seek that information directly from its owners. Thus, MCI has provided no justification for placing BellSouth in the untenable position of either curtailing its service offering or breaching its obligations to third parties, merely because MCI has made no apparent effort to contact those third parties directly. The Commission should not allow MCI's refusal to take action to achieve the benefits it seeks to operate as a denial of those benefits to BellSouth.⁶

⁴ "[T]he Commission *shall* forbear from applying any regulation or any provision of this chapter to a telecommunications carrier or telecommunications service . . . if the Commission determines that [the three-prong test is satisfied]." 47 U.S.C. § 160 (emphasis added).

⁵ Its accusatory rhetoric aside, MCI has failed to identify any nondiscrimination obligation it alleges BellSouth to have been violating. See MCI Supplemental Comments at 1. As BellSouth has pointed out previously, however, to the extent MCI believes it has developed facts that would support a claim of violation of Section 201 or 202 of the Act, it has remedies available to it in both United States District Court and before the Commission. To the extent MCI bases its accusations on the interconnection requirements of Section 251, MCI has had multiple opportunities to arbitrate this issue and to seek redress in U.S. District Court if dissatisfied with an arbitration result. Instead, MCI has entered agreements with BellSouth inclusive of this issue following the good faith negotiation process. The Commission should be cautious not to mistake MCI unsubstantiated rants for substantive showings.

⁶ MCI's decision not to seek third party information directly from those third parties suggests that its purported "need" for that information to come from BellSouth is more a fabrication and regulatory ploy than it is a competitive necessity.

Notwithstanding commentary in its earlier filings, MCI also clarifies that its argument is grounded in Section 272 rather than Section 251.⁷ Further, MCI asserts that it is “simply requesting nondiscrimination.”⁸ The fallacy of MCI’s subsequent argument, however, is that it assumes that in the absence of Section 272 nondiscrimination safeguards (“or the equivalent thereof”⁹), BellSouth would escape nondiscrimination obligations altogether. That simply is not the case.

Forbearance from enforcement of Section 272 will not leave a nondiscrimination void. To the contrary, in addition to the nondiscrimination obligations of Section 251, BellSouth will remain subject to the nondiscrimination standards of Sections 201 and 202. Indeed, it is the nondiscrimination standard of Sections 201 and 202 that has formed the basis of the Commission’s past decisions to permit integration of regulated and nonregulated operations.

Moreover, the standard to which a carrier is held in order to be entitled to forbearance under Section 10 is that its practice not be “unjustly or unreasonably discriminatory.” This is the same standard to which BellSouth is held under Sections 201 and 202. Because of the overarching reach of these latter sections, “enforcement of [Section 272] is not necessary to ensure that [BellSouth’s] practices . . . are just and reasonable and are not unjustly or unreasonably discriminatory.” Accordingly, where enforcement of Section 272 is not “necessary”

⁷ Compare, MCI Supplemental Comments at 7 (“MCI is not pressing its right under Section 251...”), with, MCI Initial Comments at 8 (citing “the requirements of Section 251”). MCI’s choice to couch its argument in terms of Section 272 is a practical necessity, considering that MCI has agreed to, and chosen not to arbitrate, provisions of its Section 251 interconnection agreements with BellSouth regarding third party directory data.

⁸ MCI Supplemental Comments at 7.

⁹ MCI Supplemental Comments at 1.

to achieve the Section 10 nondiscrimination standard, the Commission “shall” forbear from applying it.¹⁰

AT&T’s arguments fare no better. At the outset, AT&T loses focus quibbling over BellSouth’s assertion that “Section 272 has little direct bearing on consumer protection.”¹¹ In the context of BellSouth’s discussion of the three prongs of the Section 10 forbearance test, BellSouth’s observation was that Section 272 is not a “consumer protection” provision in the nature of certain other consumer-specific provisions, such as those relating to consumer privacy¹² or use of toll-free numbers for pay-per-call services.¹³ Indeed, BellSouth’s statement immediately followed its discussion of the various degrees of privacy protection afforded customers’ individual directory listings. BellSouth’s point, since AT&T missed it, is that Section 272 is not necessary to achieve the type of direct consumer protections already afforded subscribers through measures such as directory listing options.

AT&T’s attempt to downplay the degree of competition in the existing directory information market is also unavailing. AT&T noticeably compares ILEC directory assistance offerings with CD-ROM directories and Internet services rather than with its own offering and generalizes that “these services” are not as up to date as ILEC offerings. Of course, for some

¹⁰ Thus, even having agreed with BellSouth’s delivery of directory information pursuant to Section 251 interconnection agreements and having elected not to arbitrate that issue, MCI nonetheless retains the right to bring a Section 208 complaint if it believes BellSouth has engaged in unreasonable or unjust discrimination or other unjust or unreasonable practices. Given that the information MCI seeks does not belong to BellSouth and appears to be accessible to MCI from its rightful owners if MCI chooses to pursue it, however, it is doubtful that MCI could sustain a claim that BellSouth’s practice of abiding by its contracts is unjust or unreasonable.

¹¹ AT&T Supplemental Comments at 8, *citing* BellSouth Supplemental Filing at 8.

¹² *See, e.g.*, 47 U.S.C. § 222.

¹³ *See, e.g.*, 47 U.S.C. § 228.

competitive offerings, such as CD-ROMs and printed directories, the publisher's chosen medium dictates the frequency or feasibility of updates. For others, such as Internet listings, the provider generally does not charge users for the service and thus has less financial incentive to maintain up to date listings.

None of this, however, suggests that up to date data is not available to those who desire it. As detailed in its Supplemental Filing, BellSouth offers a host of directory assistance and listing products.¹⁴ Among them is Directory Assistance Database Service, which provides initial and daily update information to reside on the database of the competing directory service provider. Thus, application of Section 272 is not required to ensure the availability of timely and accurate directory assistance information to providers of competing services.

In sum, neither MCI nor AT&T has provided any evidence that application of Section 272 to BellSouth's reverse directory services is necessary to guard against unjust or unreasonable discrimination, to protect consumers, or to be consistent with the public interest. In contrast, BellSouth has shown that each of these objectives is met without Section 272. Under these circumstances, the Commission must forbear from applying that section.

E911 Service

As noted above, neither MCI nor AT&T strenuously opposes forbearance from the separate affiliate requirement of Section 272 for BellSouth's E911 service. MCI carries forward its nondiscrimination argument, while AT&T challenges the sufficiency of BellSouth's and others' filings. Neither party, however, provides any grounds for the Commission not to forbear from applying Section 272 to BellSouth's E911 service.

¹⁴ See BellSouth Supplemental Filing at 9.

AT&T makes lip service allegations of inadequacy of cost information supporting the BOCs' petitions, but acknowledges that the forbearance test of Section 10 is not contingent on costs.¹⁵ Thus, a lack of precise quantification of the costs of application of Section 272 is not fatal to any forbearance petition. In any event, BellSouth demonstrated in its Supplemental Filing that its E911 costs would likely increase in multiples were it to try to replicate its existing, highly fault tolerant E911 systems in each of its 38 LATAs. Precise quantification is not necessary for one to conclude that such replication of systems would materially increase the costs of E911 service to local governments and agencies, and thereby to their constituents, with no attendant increase in benefits.¹⁶ Forbearance is necessary to avoid this encroachment on the public interest.

AT&T also asserts by implication that BellSouth's supplemental filing fails to consider the impact of forbearance on local competition.¹⁷ Here, too, AT&T is in error.

As BellSouth pointed out, Congress has already determined that local competition will be advanced if BOCs, not their separated affiliates, retain the obligation to provide CLECs with nondiscriminatory access to 911 and E911 services. BellSouth also described how it is meeting that obligation, both for those CLECs that want to interconnect their facilities with BellSouth's network and for those who opt to compete merely through resale.¹⁸ As thus shown, application of Section 272 to BOCs' E911 services is not necessary to achieve Congress's local competition objective.

¹⁵ AT&T Supplemental Comments at 3-4.

¹⁶ Indeed, as BellSouth showed, such a distributed system would be more vulnerable to a variety of hazards, including natural disasters and breaches of security. Supplemental Filing at 19.

¹⁷ AT&T Supplemental Comments at 4. AT&T referred to the several RBOCs' filings generally, and purported to support its claim by specific reference to individual filings. AT&T made no specific reference to BellSouth's filing, however.

¹⁸ Supplemental Filing at 20.

MCI's nondiscrimination argument is even more out of place here than it was for reverse directory service.¹⁹ MCI seeks access to BOCs' E911 databases so that it can use that information in its operator services operations' handling of emergency calls. In the first instance, because this issue is related to MCI's provision of operator services and not to its provision of any competing E911 service, this claim is unrelated to whether forbearance from applying Section 272 is appropriate, as MCI implicitly concedes.²⁰ Moreover, as SBC demonstrated in response to this claim previously,²¹ it is unlikely that the geographic areas served by MCI's or any other IXC's switch -- and, hence, the local municipalities and other 911 jurisdictions -- will coincide with those served by an ILEC. Accordingly, in order to avoid misrouting of calls placed to "0-" in emergency situations, MCI and other IXCs should be required to own up the public interest responsibility of coordinating with appropriate PSAPs for call-related information necessary for proper routing of emergency calls, rather than taking a "dangerous shortcut to this crucial planning effort"²² by relying on BOC information for their own independent needs.

CONCLUSION

BellSouth has satisfied the statutory test for forbearance from the requirements of Section 272 for its integrated reverse directory and E911 services, and the Commission therefore must forbear from applying that section. The Commission also should reject the attempts of AT&T and

¹⁹ Although less clear, BellSouth assumes that MCI also is abandoning its Section 251-based argument for E911 service as it did for reverse directory service, for purposes of this forbearance proceeding.

²⁰ See, MCI Supplemental Comments, Attachment B, at 4 (indicating MCI's desire to obtain information to support its operator service functions from all ILECs, not just those subject to Section 272.)

²¹ See, Reply Comments of SBC Communications, Inc., CC Docket No. 96-149, at 3-5 (May 6, 1997).

²² *Id.* at 5.

MCI to engraft the nondiscrimination requirements of Section 272 onto such longstanding service offerings, in recognition of the other remaining nondiscrimination obligations that are consistent with the standard set by Section 10.

Respectfully submitted,

BELLSOUTH CORPORATION

By:

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DATE: August 5, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have on this 5th day of August, 1997 served the following parties to this action with a copy of the foregoing **BELSOUTH REPLY TO COMMENTS ON ITS SUPPLEMENTAL FILING** by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.


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